101ST CONGRESS
2d Session

SENATE

EXEC. REPT.
101-20

NOMINATION OF T. TIMOTHY RYAN, JR. TO BE DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION

FROM THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

A REPORT

together with

ADDITIONAL VIEWS

APRIL 2 (legislative day, JANUARY 23), 1990.—Ordered to be printed

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Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

The Committee on Banking, Housing, and Urban Affairs, to which was referred the nomination of T. Timothy Ryan, Jr., to be Director of the Office of Thrift Supervision, reports favorably thereon and recommends that the nomination be confirmed.

COMMITTEE ACTION

The nomination of T. Timothy Ryan, Jr., to be Director of the Office of Thrift Supervision was submitted by President Bush to the Senate on March 23, 1990, and was referred to the Committee the same day. Mr. Ryan testified before the Committee on March 28, 1990.

At its meeting on March 30, 1990, the Committee voted 11-10 to report the Ryan nomination favorably to the Senate. Voting in favor of the nomination were Senators Garn, Heinz, D'Amato, Gramm, Bond, Roth, Mack, Kassebaum, Pressler, Sanford, and Shelby. Voting against the nomination were Senators Riegle, Cranston, Sarbanes, Dodd, Dixon, Sasser, Graham, Wirth, Kerry, and Bryan.

COMMITTEE COMMENTS

On March 23, 1990, President Bush nominated T. Timothy Ryan, Jr., to be Director of the Office of Thrift Supervision. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 provides that the Office of Thrift Supervision shall have a director as follows:

> (1) IN GENERAL.—There is established the position of the Director of the Office of Thrift Supervision, who shall be the head of the Office of Thrift Supervision and shall be subject to the general oversight of the Secretary of the Treasury.

Biographical information submitted by Mr. Ryan shows the following professional experience. Since 1983, Mr. Ryan has been an attorney in private practice in Washington, D.C., with the firm of Reed Smith Shaw & McClay, and a predecessor firm, Pierson, Ball & Dowd. Prior to joining that firm, Mr. Ryan served from 1981-1983 as Solicitor of the United States Department of Labor. From November, 1980, to March, 1981, Mr. Ryan was Legal Counsel to the 1980 Presidential Transition Office in Washington, D.C. From September, 1978 to November, 1980, Mr. Ryan was an associate with the law firm of Pierson, Ball & Dowd in Washington, D.C. From December, 1976 to September, 1978, he was an associate with the law firm of Loomis, Owen, Fellman & Coleman in Washington, D.C. From October, 1975, to December, 1976, he was Deputy General Counsel to the President Ford Committee in Washington, D.C. From November, 1974, to October, 1975, he was an associate with the law firm of Venable, Baetjer & Howard in Baltimore, Maryland. From August, 1973 to November, 1974, he as an attorney-legal assistant with the National Labor Relations Board in Washington, D.C.

In addition, Mr. Ryan's biographical materials show he was a member of the ERISA Advisory Council from 1985 to 1986; a member of the Administrative Conference from 1981 to 1985; a member of the Overseas Private Investment Corporation from 1981 to 1983; and Secretary to the Board of Visitors of George Mason University from 1979 to 1982.

Mr. Ryan is a graduate of American University Law School, where he received his J.D. in 1973, and of Villanova University, where he received his A.B. in 1967. A copy of the biographical materials Mr. Ryan submitted to the Committee is included as Appendix A to this report.

On March 23, 1990, the same day that President Bush submitted Mr. Ryan's nomination to the Senate, Treasury Secretary Nicholas F. Brady wrote to Banking Committee Chairman Donald W. Riegle, Jr., requesting expedited, favorable, consideration of Mr. Ryan's nomination. A copy of the letter is included as Appendix B to this report.

In response to that letter, the Committee held a hearing on Mr. Ryan's nomination on March 28, 1990, at which Mr. Ryan testified for approximately four hours. Following that hearing, Chairman Riegle convened a markup on the nomination on March 30, 1990. In convening the markup, Chairman Riegle invoked Committee Rule 2(e), which permits the Committee Chairman to waive the usual notice requirements for a markup upon a determination of exigent circumstances. In his opening statement at the markup, Chairman Riegle cited the following exigent circumstances: (1) continuing large losses in the thrift industry; (2) the district court decision in *Olympic Federal*, which, even though stayed by the court of Appeals, has had the effect of freezing the actions of the Office of

Thrift Supervision and the Resolution Trust Corporation; (3) the fact that the stay of the distict court's decision by the Court of Appeals expires on April 11, when the Senate is scheduled to be in recess; (4) the Treasury Secretary's request that efforts to repond to Secretary Brady's request that the Committee expedite consideration of the nomination; and (5) the Committee's prior efforts to respond to Secretary Brady's request in holding the hearing on Mr. Ryan's nomination only three business days after the nomination papers were received by the Senate.

CONCLUSION

The majority of the Committee felt that Mr. Ryan's nomination to be Director of the Office of Thrift Supervision should be confirmed. The Committee intends to proceed to floor consideration of the Ryan nomination as soon as possible.

APPENDIX A

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Ryan, Jr. (LAST) Thomas (FIRST) Timothy (OTHER)

Position to which nominated: Director, Office of Thrift Supervision Date of nomination: 3/22/90

Date of birth: 13 (DAY) 6 (MONTH) 45 (YEAR) Place of birth: Washington, DC

Marital status: Married Full name of spouse: Judith Rush Ryan

Name and ages of children: Kathryn - 8

Michael - 5

Education:

Institution	Dates attended	Degrees received	Dates of degrees
St. Anthony's High School	1959-1963	Diploma	1963
Villanova University	1963-1967	A.B.	1967
American University Law School	1970-1973	J.D.	1973

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Urban Mass Transportation Fellowship

Army Commendation Medal

Department of Labor - Special Recognition Award

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Program for the Advancement of Commercial Technology	Member	6/87 - present
Georgetown University Law Center	Adjunct Professor	9/79 - 9/83
American Bar Association Administrative Law Section	Election Law Section Vice Chairman	6/80 - 6/81
Dean's Advisory Council American Univ. Law School	Chairman/Member	1/85 - present
D.C. Bar Association	Member	8/74 - present
American Council of Young Political Leaders	President/ Board Member	1/81 - 2/90
Presidential Transition Found.	Secretary;Director	11/80 - present
Federal Bar Association	Member	8/74 - 2/90

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

5/83 - Present; Partner, Reed Smith Shaw & McClay, including Pierson Ball & Dowd, Washington, DC

3/81 - 4/83; Solicitor of Labor, U.S. Department of Labor, Wash., DC

11/80 - 3/81; Legal Counsel, 1980 Presidential Transition Office Washington, DC

9/78 - 11/80; Associate, Pierson, Ball & Dowd, Washington, DC

12/76 - 9/78; Associate, Loomis, Owen, Fellman & Coleman, Washington, DC

10/75 - 12/76; Deputy General Counsel, President Ford Committee, Wash., DC

11/74 - 10/75; Associate, Venable, Baetjer & Howard, Baltimore, MD

8/73 - 11/74; Attorney-Legal Assistant, National Labor Relations Board Washington, DC

9/72 - 6/73; Fellow, Urban Transportation Institute, Washington, DC

6/71 - 6/72; Law Clerk, Department of Transportation, Washington, DC

3/70 - 6/71; Law Clerk/Messenger, Hogan & Hartson, Washington, DC

8/67 - 3/71; Ammunition Officer, U.S. Army, Ft. Belvoir, VA and Taegu, Korea

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

U.S. Army - 1967-1970

Legal Assistant, National Labor Relations Board - 1973-74

Secretary, Board of Visitors, George Mason University - 1979-82

Solicitor of Labor, Department of Labor - 1981-83

Member, Oversees Private Investment Corporation - 1981-83

Member/Council, Administrative Conference - 1981-85

Member, ERISA Advisory Council - 1985-86

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Convevancing of Urban Transportation Properties, 1973 (NTIS)

Co-Author, "Obligations of Government Contractors with Respect to Disabled Veterans, Veterans of the Vietnam Era and Handicapped Individuals, Equal Employment Practice Guide, FBA, 1978 and 1979

Co-Authored, "Hepatitis B; An Occupational Hazard For Health Care Personnel, Health Matrix, Vol. II, No. 4, p. 3, 1985

"The Solicitor's View of the Labor Department," Labor Law Developments 1982, 28th Annual Institute, Southwestern Legal Foundation, Dallas, TX

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Committee to Re-elect the President - Advance Man - 1972

President Ford Committee - Deputy General Counsel - 1976

Warner for Senate Committee - Counsel - 1978, 1984, 1990

Baker for President - Special Counsel - 1980

George Bush for President - Special Counsel - 1988

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

I don't remember whether they are over $500 or not, but I have contributed to the Republican Party and candidates. Most frequently, the Republican National Committee, the Republican Party of Virginia, and John Warner for Senate. I have also made in kind contributions of time to all political committees for which I have worked over the years.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

(see attachment)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Upon confirmation, and prior to taking office, I will withdraw from Reed Smith, Shaw & McClay, the law firm in which I am currently a partner. My withdrawal will be in accordance with the firm's partnership agreement and, other than the continued maintenance of my retirement account as part

(see over)

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No specific plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Future employment relationships (continued):

of the firm's retirement plan and my right to receive an amount equal to the sum of my capital account and my partnership share calculated as of the date of withdrawal, I will completely sever my relationship with the firm. I do, however, intend to remain a limited partner in M&M Partnership, in which, along with approximately 150 member of the firm, I have an interest in an office building in Pittsburgh, PA

Senate Banking Committee Questionnaire:

Q: State fully your qualifications to serve in the position to which you have been named.

A: I believe that my experience of almost two decades in managing large organizations and serving clients as a practicing attorney well qualifies me for the position of Director of the Office of Thrift Supervision.

I have been a practicing attorney for nearly seventeen years, with considerable legal experience both in the private and public sectors. My most recent Federal appointment took place in 1981, when President Reagan, with the advice and consent of the Senate, appointed me to the position of Solicitor of Labor. In that position, which I held until 1983, I was responsible for all the legal activities of the Labor Department, its legislative program, and served as legal advisor to the Secretary of Labor. As Solicitor, I had ultimate responsibility for the management and direction of approximately 600 attorneys in one of the largest Cabinet departments, including broad-scale delegated litigation efforts in Washington and 16 field offices pertaining to the vast array of statutes administered by the Labor Department.

I have also had several appointments to various advisory boards and councils, including my service as President and a Member of the Board of the American Council of Young Political Leaders; Chairman and Member of the American University Law School Dean's Advisory Council; a member of the Oversees Private Investment Corporation; the Program for the Advancement of Commercial Technology in India; and as a member of the Administrative Conference of the United States and its Board of Directors (Council).

In addition, I have had extensive involvement with the transition efforts of several Administrations and election campaigns. In 1976, I served as Deputy General Counsel of the President Ford Committee, and in 1988, I was Special Counsel to the George Bush for President committee. In 1980, I served as Legal Counsel for the Reagan/Bush transition team.

As to my private sector experience, I have been associated as a partner with Reed Smith Shaw & McClay (including Pierson, Ball & Dowd which merged with the firm) since 1983. At present, I am a member of the firm's Executive Committee. The clients of this national law firm include many of the major corporations and financial institutions in America. My activities at the firm have included representation of clients in the ERISA fiduciary and litigation areas as well as general Washington representation for various clients in multiple business sectors.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Pursuant to partnership agreement, I will receive capital account and partnership share calculated on service performed through date of departure from the firm.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

(none)

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

Representation of the Association of Financial Guaranty Insurors on risk-based capital guidelines issued by federal regulators. Accordingly, I will recuse myself from any involvement in any issues involving credit enhancement through the use of insurance.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

° INTELSAT - on general matters affecting international communications.

° Comtel ASC - on Commercial Space Launch Act

° On labor legislation introduced by the Reagan Administration while I was Solicitor of Labor.

° Periodic contact on behalf of the firm client Securities Industry Association on various issues. None recently.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

While I do not believe that any of my financial interests would conflict with my duties, should such a potential conflict arise, I will promptly advise the Department's ethics officials and take whatever action is deemed appropriate.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

APPENDIX B

THE SECRETARY OF THE TREASURY
WASHINGTON

March 23, 1990

The Honorable Donald W. Riegle, Jr.
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to request expedited, favorable consideration of Timothy Ryan, the President's nominee for Director of the Office of Thrift Supervision (OTS).

Our request for expedited action stems from recent court decisions in which injunctions have been entered against OTS based on Constitutional arguments. In order to avoid any delay or uncertainty in forging ahead with the critical work of OTS under the 1989 FIRREA legislation, an OTS Director, nominated by the President and confirmed by the Senate needs to be on the job. This is the fastest and surest way that Congress and the Executive Branch can address the current uncertainty.

I know that working together we can and will address this situation, and I thank you for your cooperation and assistance.

Sincerely,

Nicholas F. Brady

ADDITIONAL VIEWS OF SENATORS RIEGLE, CRANSTON, SARBANES, DODD, DIXON, SASSER, GRAHAM, WIRTH, KERRY, and BRYAN

By a vote of 11 to 10, the Banking Committee reported out the nomination of T. Timothy Ryan, Jr., to be Director of the Office of Thrift Supervision ("OTS"). We voted against Mr. Ryan's nomination because we believe he lacks the knowledge, experience, and vision needed for this job at a time when America's thrift industry faces the greatest peril in its history.

Normally, a President deserves wide latitude in selecting nominees. Since the Bush Administration took office, this Committee has reported favorably on 29 of the President's nominees without a single dissenting vote. But this is not a normal situation: with thrift industry losses running at almost $30 million a day, according to the most recent estimates, we cannot accept the proposition that -- in a nation of some 240 million people, including many of the world's foremost experts on banking and finance -- it is impossible to find a candidate of sufficient background, experience, and stature to be the nation's chief savings and loan regulator. We reject, moreover, the argument that any candidate with top-level banking, thrift, or real estate experience would be unwilling to serve or prove to be unacceptable. In fact, the ranks of financial services regulators now in place at the highest levels of our

government include numerous individuals with extensive experience related to the industries they oversee. Federal Deposit Insurance Corporation ("FDIC") Chairman William Seidman, Federal Reserve Board Member John LaWare, and Comptroller of the Currency Robert Clarke are but three prominent examples. We fully support the urgent need to fill the vacant position, but there are better ways to meet that need than to confirm this nominee, who lacks the basic qualifications for this key post.

THIS IS A CRITICAL APPOINTMENT

A. *Regulator of the Savings and Loan Industry*

The Director of the OTS will be the primary regulator of the nation's savings and loan industry, which includes approximately 2,500 institutions. As of the fourth quarter of 1989, roughly 700 of these institutions were losing money. How well these institutions are regulated will have important consequences for these institutions and their depositors, and could make a difference worth tens of billions of dollars to the deposit insurance fund and the taxpayers who stand behind that fund. Failure to make the best choice to head the OTS could be very expensive for America.

The next Director of the Office of Thrift Supervision will be charged with implementing the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") -- landmark reform legislation that

substantially altered the form and substance of savings and loan regulation. To implement that legislation successfully, the Director of OTS *must* clearly understand both the policy dimensions of thrift regulation and the practical consequences of policy choices for thrifts, thrift depositors, and the deposit insurance fund. Mr. Ryan's forceful pledge to "get things done" cannot substitute for such understanding.

B. ***Director of the Federal Deposit Insurance Corporation***

If the Director of the OTS only had to regulate a large industry in deep crisis, we think that task alone would demand a knowledgeable, experienced nominee. But, in fact, the Director will have two additional jobs of formidable importance. First, the Director of the OTS will also serve as a member of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC"), the primary regulator of 7,950 state-chartered commercial banks and deposit insurer of the entire banking industry.

According to some analysts, problems in the commercial banking industry are increasing. In the past six months, many large banks have reported hundreds of millions of dollars in real estate loan losses. Some major banks are exposed to shaky leveraged buyouts while others still have large exposures in less-developed countries. The Board of Directors of the FDIC could have a critical policy role to play in protecting the safety and soundness of the nation's commercial banks.

C. ***Director of the Resolution Trust Corporation***

The Director of the OTS will also serve as a member of the Board of Directors of the Resolution Trust Corporation ("RTC"), the entity FIRREA established to dispose of the assets of failed thrift institutions. The magnitude of the RTC's asset disposition task is unprecedented in American history. The Administration has estimated that the RTC may ultimately have to dispose of over $500 billion in assets. How swiftly the RTC can dispose of these assets, and how much money it can get for them, will make a big difference in the bottom-line cost of the thrift crisis to America's taxpayers.

D. ***A Five Trillion Dollar Job***

In sum, the position of Director of the OTS, and member of the FDIC and RTC Boards of Directors, carries with it responsibility over nearly $5 *trillion* of assets at federally insured institutions. This includes $3,579,000,000 of assets held by 13,188 commercial or savings banks under the regulatory supervision of the FDIC, $1,080,000,000 of assets held by 2,513 thrifts under the regulatory supervision of the OTS, and $216,000,000 of assets held by 402 failed thrifts in RTC receivership or conservatorship.

Never before in our national history has so much power and responsibility been consolidated in the hands of a single financial institutions regulator. This is an awesome task of unprecedented scale

and importance. Yet we are offered a nominee with a stunning lack of experience in financial institutions regulation or management.

THE NOMINEE'S QUALIFICATIONS

In response to the Committee's questionnaire, Mr. Ryan stated:

> I believe that my experience of almost two decades in managing large organizations and serving clients as a practicing attorney well qualifies me for the position of Director of the Office of Thrift Supervision.

We disagree. From 1983 forward, Mr. Ryan has been a partner at a law firm in which he has specialized in labor law. Prior to that, he served as the Solicitor of the Department of Labor from March 1981 to April 1983. From 1976, when he graduated from American University Law School, to 1981, Mr. Ryan held other positions as a lawyer with private law firms and political campaigns. Nowhere in this record do we find the demonstrated management ability and financial institutions expertise that a Director of the OTS should have. In our judgment, the Administration has put forward a nominee who lacks the requisite qualifications for the job.

A. *Lack of Banking or Thrift Expertise*

In testifying before the Committee, Mr. Ryan frankly admitted that his experience with banks and thrifts was limited to pension issues and some representation of the National Association of Financial Guaranty Insurers on risk-based capital guidelines:

> *Mr. Ryan*: My background is principally as a pension lawyer on the investment side. I do, however, have considerable experience in the financial institutions market, not with the thrift industry but certainly with investment banks, investment managers, commercial banks.
>
> *The Chairman*: Now, how so? I mean, what's the nature of that experience in the financial sector that you have just cited? What would be the nature of the kind of working experience that you are referring to?
>
> *Mr. Ryan*: Yes, Senator. My experience as an attorney really commencing at the Labor Department and lasting now for the last ten years has been concentrated in the ERISA area and in Title I of ERISA fiduciary business with a principal emphasis on providing advice to the investment management, investment banking, commercial banking trust departments, and to large pension plans.

Transcript of Proceedings: Nomination of T. Timothy Ryan, Jr., of Virginia, to be Director of the Office of Thrift Supervision for a Term of Five Years ("Transcript"), 83-84 (March 28, 1990).

At several points in his testimony before the Committee, Mr. Ryan candidly confessed the legitimacy of concern over his inexperience with financial institutions:

> To be quite frank with the entire panel, I was surprised when I received the call, just as those of you who are on the panel here, you've looked at my background.

Transcript, 63.

Again:

> I think the questions that have been raised by really all the panel members are the exact same question I would raise if I was sitting in your seat. Are you qualified? This is a very big tough job. Can you do it?

Transcript, 67.

Still again:

> As to this position, which I think is the central focus of the hearing, as I've said, I think the issue of qualification is a very relevant question. And, I think that the concerns raised by your colleagues are legitimate questions. I am who I am. . . . Am I the absolute best candidate in the United States for this job? I don't know. I don't know who else was in the pool quite frankly. And, as I said before, I didn't select myself for this.

Transcript, 171.

Even Committee members who ultimately voted to report favorably on the nominee remarked on his lack of experience in the financial services field:

> *Senator Mack*: As was mentioned, the rules have been written, but that doesn't mean you don't have a lot of difficult decisions you are going to have to make over the next few short months. And what concerns me, frankly, is that under this very difficult circumstance, you don't have the financial -- you don't have the background or the scope of knowledge, if you will, to try to understand what is, in fact, taking place in the trenches of those financial institutions in the country.

Transcript, 32 (Opening Remarks of Senator Mack).

> *Senator Shelby*: After looking into your background, some of which I did not have yesterday -- and I did have a nice conversation with you -- it appears to me that you would certainly be a candidate for Secretary of Labor or something like that based on your experience and background. However, it is very troubling to me that you have hardly any, if not inadequate experience, in dealing with financial institutions. . . . Obviously, you have served well and are a quick learner. But this is one of the biggest jobs in government and the fact that you don't have the background, as far as I know, in that

> area, bothers me tremendously. I will be interested in your comments later on as to whether you can show me you do.

Transcript, 34 (Opening Remarks of Senator Shelby).

> *Senator Garn*: [Y]ou clearly and candidly admit you do not have the background or experience in this specific area.

Transcript, 70.

B. ***Failure to Comprehend Issues of Fundamental Importance***

When President Bush introduced FIRREA, he said we must assure the taxpayers that they will "never again" be called on to bail out the industry. Secretary Brady echoed that theme in presenting the legislation to the Committee on February 22, 1989:

> Two watch words guided us as we prepared a plan to solve this problem--NEVER AGAIN.
>
> - **Never again** should a federal deposit insurance fund that protects depositors become insolvent.
> - **Never again** should insolvent federally-insured depository institutions remain open and operate without sufficient private risk capital.
> - **Never again** should risky activities permitted by individual states put the federal deposit insurance fund in jeopardy.
> - **Never again** should fraud committed against financial institutions or depositors be punished as if it were a victimless white-collar crime.
> - **Never again** should the nation's savings and loan system, which is important to our commitment to available, affordable housing, be put in jeopardy.

Problems of the Federal Savings and Loan Insurance Corporation: Hearings Before the Senate Committee on Banking, Housing and Urban Affairs on the Problems in the Savings and Loan Industry and the Potential Threat to the Insurance Fund Protecting S&L Deposits ("FSLIC Hearings"), Part II, 101st Cong., 1st Sess. 27 (emphasis in original).

We commend these five policy goals, and believe that ability to articulate positions and policy arguments related to these goals forms an appropriate yardstick by which to measure nominees to the position of Director of the OTS. When measured by this yardstick, however, Mr. Ryan falls short on every count but one. Only with respect to his commitment to pursue the perpetrators of thrift fraud do we believe Mr. Ryan has demonstrated the comprehension and vision we believe a nominee should have. With respect to the remaining four goals, we have grave concerns.

1. ***"Never again should a federal deposit insurance fund that protects depositors become insolvent"***

In testifying before the Committee, Mr. Ryan showed little grasp of the significance of deposit insurance or its role in current policy debates over financial modernization:

> *Senator Cranston*: What are your thoughts on deposit insurance reform? Do you think any is needed?
>
> *Mr. Ryan*: I know that the Treasury is right now in the process of collecting comments from various interest groups as

> to what should happen with the depository insurance system. And, I would await some judgments and review of those documents, Senator Cranston. *I have no specific view as to should there be modifications.* My only view is that we are looking at ultimately taxpayer funds. And, I think the principal issue involved in this job, that is Director of the OTS, has to do with preserving taxpayer funds.

Transcript, 155 (emphasis added).

We think a sound deposit insurance system is key to the future of the financial services industry. The system's integrity is critical to protecting the taxpayers from future bailouts. In addition, deposit insurance reform is a central issue in current debates over modernizing America's system of financial services regulation to improve its competitiveness at home and abroad.

2. ***"Never again should insolvent federally-insured depository institutions remain open and operate without sufficient private risk capital"***

Committee members questioned Mr. Ryan about his views on capital standards at several points in the hearing:

> *Senator Wirth*: The issue I am probing after is what is your belief, and how adequate the capital standards are, and are the capital standards adequate the way they are? Should they be stronger or weaker? Are there exceptions that ought to be made by OTS? It was my understanding that you had commented that OTS did have the authority to set a lower capital standard on behalf of your previous clients, suggesting that you might believe that lower capital standards are appropriate. Do you see what I am getting at?
>
> *Mr Ryan*: I see exactly where you are going.

Senator Wirth: Clear me up. Is that correct or incorrect?

Mr. Ryan: We certainly took a position on behalf of a client and expressed their views, and they would like to see parity between those instruments.

Senator Wirth. Which would mean lower capital standards if you had insurance, is that right?

Mr. Ryan: It would have the impact of making it the same.

Senator Wirth: Is that what you are trying to tell us?

Mr. Ryan: So, if that would be lower, then yes, you are correct, Senator.

Transcript, 90-91.

Again:

Mr. Ryan: My view on the capital guidelines is that the Congress made the decision as to what those standards should be, and the President signed the bill, and they are in place. There are tangible capital standards, there are core capital standards, and there are risk-based capital standards. Once the good will is phased out, we will be down, I guess, to really two capital standards.

Senator Wirth: Should there be any weakening of thrift capital standards?

Mr. Ryan: *I probably do not have a view on that subject right now.* My sense is that the system that is set up, although it appears to many to be very tough, appears to be reasonable.

How it's implemented --

Senator Wirth: So, we don't have an answer if you think the capital standards should be weakened or not? You don't have an opinion on that? I mean, this is one of the crucial issues Senator D'Amato was talking about earlier, certainly one of the crucial issues that we were all focused on, particularly in

> the House and in Conference, as you know. . . . I mean, I think that most of the members of the Committee would be pretty appalled if capital standards were weakened. . . . I can't speak for all of them, but my guess is that that's the case.

Transcript, 91-92 (emphasis added).

The capital standards in FIRREA were hotly debated at the Committee level, on the Senate and House Floors, and in Conference. We believe they are perhaps the single most important feature of the legislation. Capital is what separates any future losses in the thrift industry or banking industry from the taxpayers' pocket. The Administration, the Senate and the House decided to significantly toughen the capital standards for thrifts. As Secretary Brady testified in presenting FIRREA to the Committee:

> We are experiencing the results today of an industry that collectively has not been adequately capitalized. We have learned a valuable lesson: Deposit insurance simply will not work without sufficient private capital at risk and up front.
>
> The Administration plan will increase safety and soundness standards for savings and loan institutions by requiring these institutions to meet standards equivalent to commercial bank capital and regulatory standards within a two-year period.

FSLIC Hearings, Part II, 31.

3. ***"Never again should risky activities permitted by individual states put the federal deposit insurance fund in jeopardy"***

A huge portion of the losses at failed savings and loans resulted from legislative actions by the States that expanded the investment powers of State-chartered thrifts whose deposits were protected by Federal deposit insurance. Seventy percent of the FSLIC's 1988 losses came from State-chartered thrifts in just two States, California and Texas, that had aggressively deregulated State-chartered thrift investment powers. The record is clear that those savings and loans made all sorts of untraditional and ultimately unprofitable investments in such items as junk bonds, windmill projects, shopping centers, mushroom farms, and fast-food franchises.

In his testimony before the Committee, however, Mr. Ryan demonstrated little understanding of this history, confusing Federal legislation with State deregulation:

> *Senator Cranston*: What . . . factors [do you think] most contributed to the crisis and grave difficulties in the thrift industry?
>
> *Mr. Ryan*: Certainly interest volatility over the years, the technical changes that resulted in the securitization of mortgages, the competition that exists between thrifts and other financial institutions. But, my own personal view based on what I have read, is the interest volatility I think has had a real significant damaging effect on the industry.
>
> *Senator Cranston*: How much do you think deregulation had to do with it all?
>
> *Mr. Ryan*: I would say that it appears today, based on the changes that were made in Garn-St Germain and others that the results have not been positive.

* * *

> *Senator Garn*: But, if Garn-St Germain was not helpful, I would suggest the first answer, Mr. Ryan, rather than saying there were not positive changes that occurred, I'm sorry, but would indicate that you have not studied the law and have joined the crowd who continues to repeat something that is not true, because Garn-St Germain still lives.
>
> ***
>
> And, I would challenge anybody here to get out the legislative language of Garn-St. Germain and read it rather than continuing to repeat a myth and not looking at the facts that deregulation was a major cause of the problem in Texas and California and other states.

Transcript, 94, 98-99. The nominee showed no familiarity with the problems that inadequate regulation and supervision at the State level created for the thrift industry.

4. ***"Never again should the nation's savings and loan system, which is important to our commitment to available, affordable housing, be put in jeopardy"***

The Director of the OTS needs to understand where thrifts fit in the American financial system and have a vision for the future of the thrift industry. In testifying before the Committee, Mr. Ryan made it clear he has no such understanding or vision:

> *Senator Cranston*. Do you think there is a need for a specialized thrift industry to promote housing?
>
> *Mr. Ryan*: I believe that there will always be a need for someone to offer residential mortgages. And, I'm sure that

service will come from some part of the financial services industry. . . . I have been asked the question during the past three weeks whether I have any view on should there be a thrift industry. And, *I do not have a view on that right now*.

The Chairman: Wait a minute. Did I hear that right, that you don't have a view as to whether or not there should be a thrift industry?

Mr. Ryan: *I have no view as to whether the thrift industry should move forward or not move forward, Senator*.

Transcript, 94-95 (emphasis added).

Again:

The Chairman: When the question came up earlier about the future of the savings and loan industry, you were very frank and candid in saying that you really didn't have a very clear picture of what that future might be or if there will be a future there.

* * *

I think you've got to be much clearer to us now as you sit as the person about to embark on that job if confirmed as to what the game plan is. What is the strategy? Where is the industry to go? . . . You've got to have some sense for that or I don't see how you can do the job, quite frankly.

Mr. Ryan: Thank you, Senator. I do have some sense, and my sense is that, for me, *I have an open mind on that issue*.

* * *

Mr. Chairman. Let me ask you a related question. When Mr. Mullins was here last Friday, . . . he stated . . . "I feel that FIRREA is a good law. I think it is the right approach. I think the Administration made a good proposal and Congress improved upon that proposal." That was Mr. Mullins last Friday. Is that your view as well? Do you support that view?

> *Mr. Ryan*: I have not seen the statute at work in the OTS. I can tell you that if I come to another view, that is that there should be amendments or should be changes, I would come to this Committee, after obviously discussing it with the Secretary of the Treasury. . . .
>
> *The Chairman*. Well, I am not quite sure what to make of that. I guess you're saying that you don't really have a professional view on it. . . .

Transcript, 118, 121-23 (emphasis added).

We believe the Director of the OTS should have a vision for the thrift industry, even if the vision is that the industry has no future apart from the banking industry. Questions concerning the viability of the thrift charter lie at the core of ongoing policy debates. The next Director of the OTS will almost certainly have to cope with legislative proposals both to eliminate and to broaden the thrift charter. A nominee to that position should have at least a sense of what is at stake in such proposals. Mr. Ryan displayed no such sense.

4. ***No Views on Other Critical Questions***

During his appearance before the Committee, Mr. Ryan was also questioned about numerous other issues of consequence to the savings and loan industry. Repeatedly, he was unable to produce any opinions on these issues. We find this lack of views troubling.

a. ***Who should regulate the sale of securities by thrift institutions?*** On the question whether the SEC or the Office of

Thrift Supervision should oversee the sale of securities, Mr. Ryan had no views:

> *Senator Wirth*: You know that some stand-alone thrifts offer their own securities. You are familiar with that? . . . Who, in your opinion, should, if there is a stand alone thrift -- not a holding company but there is a stand-alone thrift -- who ought to be regulating those securities?
>
> *Mr. Ryan*: *I have no view on that right now, Senator. I have not given that any thought.* I have not looked at the pluses, the minuses. I have not looked at the issue. So, unfortunately, I just do not have a view on that.

Transcript, 92-93 (emphasis added).

b. ***Should savings and loans be able to sell their own junk bonds in their lobbies?*** On the question whether savings and loans or their parent holding companies should be allowed to sell uninsured debt obligations on the same premises where consumers make federally insured deposits, Mr. Ryan had no view:

> *Senator Cranston*: There is a proposal now in the Congress that we adopt a law that would ban the sale of non-government insured securities by thrift institutions because of the potential for misleading thrift customers as to whether these securities are insured. Would you favor that legislation?
>
> *Mr. Ryan*: *I have no view on that legislation right now, Senator.*

Transcript, 155-56 (emphasis added).

c. ***How should personnel vacancies at the Office of Thrift Supervision be filled?*** In response to repeated questioning from Senator Graham about how he would go about recruiting

professionals to fill the many high-level vacancies at the OTS, Mr. Ryan was unable to say anything except that he already had people in mind for some of the posts:

> *Senator Graham*: Given your current knowledge of the industry, how would you anticipate going about the process of selecting those staff that will serve directly in your office and in important positions throughout the Office of Thrift Supervision?
>
> *Mr. Ryan*: Senator, as you would expect, I have given an awful lot of thought to that. . . . I have already in mind a number of individuals to serve in that capacity. That is, in the individual jobs. I already have in mind an individual to serve as Chief Counsel. I already have in mind an individual who would serve as the Liaison with RTC.
>
> * * *
>
> *Senator Graham*: I think it is not acceptable just to say that you have some people in mind. I am interested in trying to understand a managerial style to one of the most fundamental challenges which you are going to have.

Transcript, 81-83.

> *Senator Graham*. I wonder if you would care to elaborate any further as to how you would go about identifying the pool of potential individuals, a process for evaluating those individuals, what clearance procedures you would anticipate utilizing?
>
> *Mr. Ryan*: Let me take one job at a time if I may, Senator. At least the easiest one for me is the Chief Counsel's job, which is obviously of great importance. . . . I have, obviously, I think excellent contacts in the community and as I said before, I have in mind an individual for that job. . . . Another very important job is some understanding of real estate financing. . . . To me, it is crucial that we identify people either from the commercial banking or investment banking community who have hands on . . . experience. The

> process I would follow, quite frankly, is I have, I think, excellent contacts in the investment banking community. I represent a couple of those firms. . . . It would be that process. I hope that has been more helpful, Senator.
>
> *Senator Graham*: Well, not much, frankly. One of the most important things any manager does is to appoint other people, and I believe that there should be, frankly, a clear sense of intellectual order as to how that function is going to be performed.

Transcript, 125-27.

C. ***Lack of Independence***

The Director of the Office of Thrift Supervision must be independent. The independence of the office is part of the very fabric of the statutory structure. Thus, for example, section 3(b)(3) of the Home Owners' Loan Act expressly provides:

> AUTONOMY OF THE DIRECTOR.-- The Secretary of the Treasury may not intervene in any matter or proceeding before the Director [of the OTS] unless otherwise provided by law.

As a practical matter, however, only a nominee who understands the thrift industry and the issues it confronts can exercise the independence FIRREA contemplates.

In testifying before the Committee, Mr. Ryan showed no understanding of the need to be an independent regulator. On the contrary, he plainly stated his intention to rely on the Treasury Secretary and the Deputy Treasury Secretary:

> *Senator Graham*: Returning to the question of independence, this was a very key issue as has been outlined. . . . If you were to list the three or four people that you . . . anticipate looking to for advice and counsel as you go through a continuing learning process on the savings and loan industry, who would those people be?
>
> *Mr. Ryan*: Senator Graham, I would say at the top of the list would be Chairman Seidman. . . . I would like to add also I have been very, very impressed with the willingness of Secretary Brady and the Deputy Secretary, Mr. Robson, to meet with me, to discuss anything I would like to discuss at any time, just as the members of this panel have expressed.
>
> * * *
>
> *Senator Graham*: Well, Mr. Chairman, my time is up. I have some more questions, but I have to say that I am not very satisfied that two of the three people that Mr. Ryan has indicated would be his principal sources of advice and counsel are the Secretary and Deputy Secretary within the Treasury, when these basic policy conflicts that we identified a year ago are going to arise if two-thirds of your consultation team are persons who are likely to have a philosophical position that may be inconsistent with the basic rationale for there being a thrift industry.

Transcript, 79-80, 82.

D. ***Lack of Management Experience***

The best thing the Administration has found to say about Mr. Ryan's qualifications for the job is that he is an experienced manager. Mr. Ryan himself cited his management experience as a prime qualification in his testimony to the Committee:

> What I have learned in the last three weeks is that the OTS is a government agency. It has 3500 employees. It has some of the best professionals in the government. It is people who are expert in supervising and regulating thrifts. I have some

> experience in managing people. I think I have a reputation for moving things along.

Transcript, 67.

We do not believe that Mr. Ryan's previous management experience qualifies him to head the OTS. We certainly do not believe that that experience compensates for his lack of financial institutions experience and expertise.

Mr. Ryan acquired his most extensive management experience as Solicitor of the Department of Labor. In his own words,

> As Solicitor, I had ultimate responsibility for the management and direction of approximately 1100 personnel, including 600 attorneys, in one of the largest Cabinet departments, including broad-scale delegated litigation authority in Washington and 16 field offices enforcing a vast array of statutes.

Transcript, 57. But in response to a later question from Senator Metzenbaum, Mr. Ryan said that:

> There are 600 lawyers there [at the Department of Labor] and *most of the divisions operate pretty autonomously*.

Transcript, 164 (emphasis added).

We believe that a vast difference exists between managing a few hundred lawyers and managing the 3,500 professionals of diverse training and task assignments employed by the OTS. Plainly, the management responsibilities of the Director of OTS exceed those of the Labor Solicitor by a very wide margin.

In testifying before the Committee, Mr. Ryan also claimed that he has obtained substantial management experience in private law practice. But when Senator Kerry questioned him about this experience, the following exchange cast doubt upon its significance:

> *Senator Kerry*: The only large organization which I really see a management role -- and correct me if I am wrong -- but as I read through it, the only real large organization that strikes me was your Solicitor of Labor position. What else would you describe as a large organization management position relevant to this job?
>
> *Mr. Ryan*: My present position, Senator. I am part of the management of one of the largest law firms in the United States. We have approximately four hundred lawyers, in excess of a thousand individuals.
>
> *Senator Kerry*: How many people are on the Committee that manages it?
>
> *Mr. Ryan*: In Washington, in our office, there are four of us. In Pittsburgh --
>
> *Senator Kerry*: Is there a managing partner?
>
> *Mr. Ryan*: There is.
>
> *Senator Kerry*: Are you the managing partner?
>
> *Mr. Ryan*: I am not.
>
> *Senator Kerry*: Other than those two positions, is there anything with respect to financial institutions and management?
>
> *Mr. Ryan*: No sir.

Transcript, 83-84.

THE LEGAL BACKDROP FOR THIS NOMINATION

A. *Constitutional Challenge*

Section 702(b) of the Administration's original savings and loan legislation, introduced by request February 22, 1989 (S.413), provided that the Chairman of the Federal Home Loan Bank Board on the date of enactment would became head of a new savings and loan regulatory agency, located in the Treasury Department, until the term for which he had been confirmed by the Senate expired. This provision was not suggested or advocated by the Banking Committee or any member of the Committee but apparently reflected the Administration's determination that such a transitional arrangement was necessary.

In testimony before the Committee on March 23, 1990, David Mullins, a principal Treasury Department architect of the legislation that ultimately became FIRREA and current nominee to the Board of Governors of the Federal Reserve System, confirmed that the proposal to have the sitting Federal Home Loan Bank Board Chairman become the principal savings and loan regulator originated with the Administration:

> *The Chairman*: Mr. Mullins, you were the principal architect of the Administration's savings and loan reform package. I got a call yesterday from Secretary Brady asking if the Committee would undertake to expedite the handling of the Ryan nomination to go over and become Director of the OTS and I indicated that we would move as rapidly as we can and we hope to have those papers today. But that request obviously relates to the problem that's arisen with the court test which is underway . . . as you know.

I took a look today at the original proposal that you helped write, that was sent up by the Administration and introduced by request on February 22nd of last year, and I went to the provision that deals with this to find out exactly what the thinking of the Administration had been. It's found on page 186. And with respect to the Director of the OTS, it says here on that page, "Provided, however, that the individual servings as the Chairman of the Federal Home Loan Bank Board on the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 shall be the Chairman until the date on which his term as Chairman of the Federal Home Loan Bank Board would have expired, notwithstanding Section A."

Are you familiar with that? Do you recall this?

Mr. Mullins: Vaguely, Mr. Chairman, yes, sir. It is true that our original proposal was different because originally we did not propose splitting out the Federal Home Loan Banks themselves and so the only change to the Federal Home Loan Bank Board in effect was the splitting off of FSLIC. So it was a less dramatic --

The Chairman: Well, I'm raising a different point. I'm raising a point with respect to the Director of the OTS and the fact that the recommendation of the Administration, as I read this language . . . makes it very clear that you envisioned that the sitting Chairman [of the Federal Home Loan Bank Board] would serve to the end of the term. Now you're not saying you don't remember that, are you?

Mr. Mullins: No, Mr. Chairman. I think that was the proposal.

The Chairman: So I take that to mean -- it was my assumption then and it's my assumption now that that was the intention the Administration had. Am I correct in that?

Mr. Mullins: Yes, Mr. Chairman.

The Chairman: Because that issue has come up in terms of where that idea came from and it came right out of your bill, did it not -- out of your proposal?

Mr. Mullins: Yes, Mr. Chairman. All the leadership of the FDIC and the Bank Board would have gone past through the bill and stayed in place.

The Chairman: And I take it that that question would not have arisen in that drafting group of which you were a part as to whether or not a legal challenge could later be made with respect to the confirmation process. Do you recall it ever coming up?

Mr. Mullins: Well, I think it probably was considered, Mr. Chairman, and looked into, but I thought people did not feel it was a serious possibility because you took an existing agency and took away some of its subsidiaries and passed it over through the bill and I think it was looked at -- that issue was looked at, but I think the conclusion was that we thought we were on solid ground.

The Chairman: Did it relate also, I suppose, to the fact that you were bringing that office in under the --

Mr. Mullins: Under the Treasury Department.

The Chairman: Under the Treasury Department?

Mr. Mullins: Yes, Mr. Chairman.

Transcript of Proceedings: Nomination of David W. Mullins, of Arkansas, to be a Member of the Board of Governors of the Federal Reserve System, 50-53 (March 23, 1990).

As the Administration's bill proceeded through the legislative process, this feature of the bill was accepted by the Senate and, ultimately, enacted into law as § 3(c)(5) of the Home Owners' Loan Act.

An effort to delete it from the bill was tabled on the Senate Floor -- as were all other proposed amendments to the bill -- by a vote of 61-38.

On the date of FIRREA's enactment, M. Danny Wall was serving as Chairman of the Federal Home Loan Bank Board and thus, pursuant to FIRREA, become Director of the OTS. On December 1, 1989, Mr. Wall announced his intention to resign as Director of the OTS. On March 5, 1990, the President appointed Salvatore Martoche Acting Director of the OTS pursuant to the Vacancies Act, 5 U.S.C. §§ 3345-49.

On March 1, 1990, Olympic Federal Savings & Loan Association of Berwyn, Illinois, filed a motion in the U.S. District Court for the District of Columbia seeking a temporary restraining order and permanent injunction to prevent the OTS from placing the association in receivership or conservatorship. The association's argument for relief had two parts. First, the association argued, FIRREA's provision for retaining Mr. Wall as Director of the OTS without Senate confirmation violated the Appointments Clause of the United States Constitution. U.S. Const., art. II, § 2, cl. 2. Second, the association argued that, given the unconstitutionality of Mr. Wall's tenure as Director of the OTS, President Bush could not appoint an Acting Director of the OTS under the Vacancies Act because that Act does not apply where a vacancy arises through the resignation of an unconstitutionally appointed officer.

B. ***Injunction***

On March 21, 1990, the district court granted the association's motion for injunctive relief, ruling that Mr. Wall had not been constitutionally appointed and that, therefore, an Acting Director could not be appointed under the Vacancies Act. Two days later, on March 23, the Administration formally submitted Mr. Ryan's nomination to the Senate. The United States Court of Appeals for the District of Columbia Circuit subsequently stayed the district court's injunction pending oral argument on April 11, 1990, when the Senate is scheduled to be in recess.

C. ***Alternatives to Confirming Mr. Ryan***

Unquestionably, the decision of the district court puts the Administration in a difficult legal position and lends urgency to the Administration's quest to fill the vacant position of Director of the OTS.

But we believe it is important to recognize that confirmation of an unqualified nominee is neither the best nor the only solution to the Administration's legal dilemma. Several highly qualified individuals already occupy positions in the Administration to which they have been confirmed by the Senate. Should the President nominate one of these individuals to the position of Director of the OTS, we believe Senate consideration of the nomination could proceed very rapidly.

Additionally, the Administration has the option of petitioning the U.S. Court of Appeals for an extension of its stay of the district court's injunction pending the Court of Appeals' final decision of the case. By this means, the Administration could obtain more time to find a qualified nominee.

CONCLUSION

This is not a question of personality or partisan politics. It is a question only of qualification. At this point in the history of the savings and loan industry, we believe the President's nominee is not an appropriate choice to be America's chief savings and loan regulator, a member of the FDIC Board of Directors, and a member of the RTC Board of Directors. We therefore respectfully urge rejection of the nomination of T. Timothy Ryan to be Director of the Office of Thrift Supervision.

I Adhere To the Additional Views Opposing Mr. T. Timothy Ryan's Nomination to Head the Office of Thrift Supervision

1. Senator Donald W. Riegle, Jr.

2. Senator Alan Cranston

3. Senator Paul S. Sarbanes

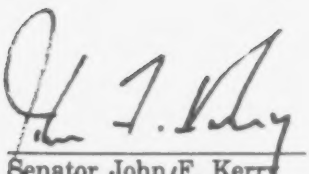
4. Senator Christopher J. Dodd

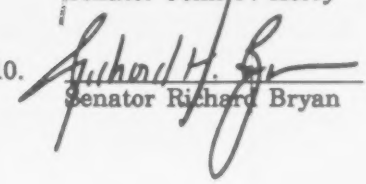
5. Senator Alan J. Dixon

6. Senator Jim Sasser

7. Senator Bob Graham

8. Senator Timothy E. Wirth

9. 
Senator John F. Kerry

10. 
Senator Richard Bryan

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